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PATENT APPLICATION

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, Colorado 80527-2400

ATTORNEY DOCKET NO. 1001B569-1

IN THE

UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Heather N. Bean et al.

Confirmation No.: 6946

Application No.: 10/067,658

Examiner: Kelly L. Jerabek

Filing Date: February 4, 2002

Group Art Unit: 2612

Title: VIDEO CAMERA WITH VARIABLE IMAGE CAPTURE RATE AND RELATED METHODOLOGY (as amended)

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEFTransmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on Dec. 20, 2005.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

(a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

1st Month
\$1202nd Month
\$4503rd Month
\$10204th Month
\$1590

The extension fee has already been filed in this application.

(b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$ 500. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Date of facsimile: 2/8/06Typed Name: Marko MizunoSignature: Marko Mizuno

Respectfully submitted,

Heather N. Bean et al.

By:

Michael A. Goodwin

Attorney/Agent for Applicant(s)

Reg No.: 32,697

Date:

2/8/06

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PATENT APPLICATION

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ATTORNEY DOCKET NO. 10018569-1IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Heather N. Bean et al.

Confirmation No.: 6846

Application No.: 10/067,688

Examiner: Kelly L. Jerabek

Filing Date: February 4, 2002

Group Art Unit: 2612

Title: VIDEO CAMERA WITH VARIABLE IMAGE CAPTURE RATE AND RELATED METHODOLOGY (as amended)

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The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

(a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

<input type="checkbox"/> 1st Month \$120	<input type="checkbox"/> 2nd Month \$450	<input type="checkbox"/> 3rd Month \$1020	<input type="checkbox"/> 4th Month \$1590
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The extension fee has already been filed in this application.

(b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$ 500. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Respectfully submitted,

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Typed Name: Marko Mizuno

Signature: Marko Mizuno

FEB 08 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT
APPEALS AND INTERFERENCES

In Re Application of:)
Heather N. Bean et al.)
Serial No.: 10/067,658) Group Art Unit: 2612
Filed: February 4, 2002) Examiner: Kelly L. Jerabek
For: VIDEO CAMERA WITH)
VARIABLE IMAGE) Atty Dkt. 10018569-1
CAPTURE RATE AND)
RELATED)
METHODOLOGY)
(as amended))

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is submitted in response to the final rejection of the claims mailed October 19, 2005. A Notice of Appeal was filed on December 20, 2005.

02/09/2006 MBINAS 00000039 082025 10067658
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This brief contains items under the following headings as required by 37 CFR §41.37 and MPEP §1206:

- (1) Real Party In Interest
- (2) Related Appeals, Interferences and Judicial Proceedings
- (3) Status of Claims
- (4) Status of Amendments
- (5) Summary of Claimed Subject Matter
- (6) Grounds of Rejection to be Reviewed on Appeal
- (7) Argument
- (8) Claims Appendix
- (9) Evidence Appendix
- (10) Related Proceedings Appendix

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(1) REAL PARTY IN INTEREST

The real party in interest in the above-referenced patent application is Hewlett-Packard Development Company, LP, having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A.

(2) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences currently known to appellants, appellants' legal representatives or the assignee, which will directly affect, or be directly affected by, or have a bearing on, the Board's decision.

(3) STATUS OF CLAIMS

Claims 1-17 were filed with the application. In an amendment filed August 2, 2005, claims 8-12 and 17 were canceled and claims 18-22 added. Accordingly, claims 1-7, 13-16 and 18-22 are currently pending in the application, all of which stand rejected. The rejection of claims 1-7, 13-16 and 18-22 is appealed.

(4) STATUS OF AMENDMENTS

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No amendments were filed or entered subsequently to the final Office action mailed October 19, 2005.

(5) SUMMARY OF THE CLAIMED SUBJECT MATTER

Appellants' invention as independently claimed is summarized and explained below with reference numerals, specification page numbers and drawing figure numbers indicating where the claim finds support in the specification and drawings.

1. A camera user interface assembly comprising:
a video capture selector (128) having at least a first operating state in which said camera (100) captures image data at a first rate and a second user selectable operating state in which said camera (100) captures image data at a second rate different from said first rate [Figs. 1 and 3; page 4, lines 14-21];
said selector (128) being switchable between said first and second states during continuous image data capture [Fig. 3; page 8, line 23 - page 9, line 13].

13. A method of creating and displaying video of an object comprising:
imaging said object (160) on a photodetector array (136) [Fig. 2; page 7, lines 23-25];

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in response to a first user input applied to a variable-frame-rate-trigger (128):

- generating a first image data set (C1) representative of said object (160) [Fig. 3; page 8, lines 28-31];
- then waiting a first period of time, then generating a second image data set (C2) representative of said object (160) immediately after said first period of time [Fig. 3; page 8, lines 28-31];

in response to a second user input applied to said variable-frame-rate-trigger (128), wherein said second user input is different than said first user input [Fig. 3; page 8, lines 26-28]:

- generating a third image data set (C3) representative of said object (160) [Fig. 3; page 8, lines 28-31];
- then waiting a second period of time, then generating a fourth image data set (C4) representative of said object (160) immediately after said second period of time, wherein said second period of time is different than said first period of time [Fig. 3; page 8, lines 28-31];

streaming at least said first image data set (C1), said second image data set (C2), and streaming said third image data set (C3) and said fourth image data set (C4) [Fig. 3; page 7, lines 29-32; page 9, line 18 - page 10, line 16].

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14. A method of capturing image data with a camera comprising:
determining a frame rate for future image capture based upon a user input provided while the camera (100) is simultaneously capturing image data (C1) [Fig. 3; page 8, lines 26-31];
then capturing further image data (C2) at said determined frame rate [Fig. 3; page 8, lines 26-31]; and
storing said captured image data (C1, C2) [Fig. 3; page 12, lines 13-16].

15. A camera user interface comprising:
means (100) for capturing frames at a frame rate [Fig. 2; page 8, lines 23-31];
means (128) for selectively varying said frame rate while capturing said frames [Figs. 2, 3; page 8, lines 23-31]; and
means for storing said captured frames [Fig. 3; page 12, lines 13-16].

18. A method of operating a camera, said method comprising:
causing said camera (100) to initiate image data acquisition by actuating a switch (128) located on the exterior of said camera [Figs. 2, 3; page 11, lines 2-6];

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causing said camera (100) to vary the frame rate at which image data is acquired by selectively operating said switch (128) [Figs. 2, 3; page 11, lines 2-6].

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Claims 1 and 13 stand rejected under 35 U.S.C. §102(e) as being anticipated by Lee et al. (U.S. Patent No. 6,614,477).
- B. Claims 18 and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lee et al.
- C. Claims 2-5, 21 and 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lee et al. in view of Ohkawara et al. (U.S. Patent No. 6,630,950).
- D. Claims 6 and 7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lee et al. in view of Niikawa (U.S. Patent No. 6,710,809).
- E. Claims 14 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lee et al. in view of Matsumoto et al. (U.S. Patent No. 6,795,642).

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- F. Claim 16 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Lee et al. in view of Matsumoto et al. and further in view of Niikawa.
- G. Claim 20 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Lee et al. in view of Yamamoto et al. (U.S. Patent No. 6,856,345).

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(7) ARGUMENT

Argument re Issue A

Claims 1 and 13 stand rejected under 35 U.S.C. §102(e) as being anticipated by Lee et al. (U.S. 6,614,477). Appellants respectfully assert, for at least the reasons advanced below, that claims 1 and 13 are not anticipated by Lee et al.

Claim 1

Claim 1 recites the following:

A camera user interface assembly comprising:
a video capture selector having at least a first operating state in which said camera captures image data at a first rate and a second user selectable operating state in which said camera captures image data at a second rate different from said first rate;
said selector being switchable between said first and second states during continuous image data capture.

(emphasis added)

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Claim 1 recites that the selector is switchable during continuous image data capture. Although Lee et al. discloses a camera in which the frame rate can be selected, Lee et al. does not disclose or suggest that the frame rate can be selected *during continuous image data capture* as required by claim 1.

The Examiner explains the current rejection on page 4 of the final Office action, as follows:

Since the frame rate selection signal (SEL) is generated by a user-controlled switch and Lee does not disclose that the switch is disabled at any time, *it is inherent that the user may actuate the switch in order to vary the frame rate at any time*. Therefore, after a user commands a frame rate and continuous image capture is started, the user-controlled switch may be pressed at any time after the initial actuation in order to vary the frame rate during continuous image capture.

(italics added)

The Examiner, thus, admits that Lee et al. does not *explicitly* disclose that the switch can be actuated during continuous image data capture as required by appellants' claim. The Examiner, however, takes the position that this limitation is *inherently* disclosed by the reference. The Examiner supports this position by pointing to the fact that Lee et al. does not specifically disclose that the switch is disabled at any time. Appellants respectfully

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assert that the Examiner's position is improper because it is not in accord with the guiding principles of inherency.

Inherency is discussed in MPEP 2112 IV. where, for example, the following is set forth:

... "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) (The claims were drawn to a disposable diaper having three fastening elements. The reference disclosed two fastening elements that could perform the same function as the three fastening elements in the claims. The court construed the claims to require three separate elements and held that the reference did not disclose a separate third fastening element, either expressly or inherently.).

Accordingly, to properly establish inherency in the present case, the Examiner must show that Lee et al. makes clear that the switch being actuatable during continuous image capture is *necessarily present* in the device disclosed.

Appellants assert the Examiner has not met this burden because a critical and objective reading of the Lee et al. reference fails to indicate that the switch is *necessarily* actuatable during continuous image capture. It is pointed out that the Lee et al. switch could, for example, be actuatable only prior to beginning

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video capture. Such conventional operation is discussed, for example, in the Background section of appellants' application as follows:

Conventional video cameras capture frames of video at a predetermined frame rate. This predetermined frame rate is preset at the time of manufacture or set by the user as a one-time-event. This one-time setting of the frame rate occurs prior to capturing video. Such one-time-event setting of frame rate may, for example, be at a lower fps setting (e.g. 6 fps), a higher fps setting (e.g. 40 fps), or the usual setting of about 30 fps. The lower fps setting is typically used in order to conserve memory and power reserves. The relatively high fps setting (e.g. 40 fps) is typically used in order to better capture scenes in which action occurs.

(page 4, lines 1-12)

There is nothing in the Lee et al. reference to suggest that the disclosed device does not operate in this manner.

The Examiner supports the inherency position by pointing to the fact that Lee et al. does not specifically disclose that the switch is disabled at any time. It is noted, however, that this line of argument does not follow the applicable law:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); ...

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(MPEP 2112 IV., underlining in original)

For the reasons advanced above, appellants respectfully assert that the current rejection is improper and should, therefore, be overruled.

Claim 13

Claim 13 recites the following:

A method of creating and displaying video of an object comprising:

imaging said object on a photodetector array;
in response to a first user input applied to a variable-frame-rate-trigger:

- generating a first image data set representative of said object;
- then waiting a first period of time, then generating a second image data set representative of said object immediately after said first period of time;

in response to a second user input applied to said variable-frame-rate-trigger, wherein said second user input is different than said first user input:

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- generating a third image data set representative of said object;
- then waiting a second period of time, then generating a fourth image data set representative of said object immediately after said second period of time, wherein said second period of time is different than said first period of time; streaming at least said first image data set, said second image data set, and streaming said third image data set and said fourth image data set.

Claim 13 recites "streaming at least said first image data set, said second image data set, and streaming said third image data set and said fourth image data set". Although Lee et al. discloses that the capture rate can be changed, Lee et al. does not disclose that image sets captured at different frame rates can be streamed together. The Examiner points to col. 4, lines 9-31 of Lee et al. (on page 5 of the final Office action) to support the instant rejection. This portion of Lee et al. is reproduced as follows:

FIG. 4 illustrates an exemplary camera system 400 in which the operations of FIGS. 2 and 3 may be practiced. The camera system 400 includes an image capture device 42, such as a CCD array, that receives optical signals through a lens 41, stores charge corresponding to the input optical signals, and produces image data therefrom. A correlated double sampling and automatic gain controller (CDS & AGC)

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43 performs correlated double sampling based on the image data and a precharge level, and generates analog signals having a level depending on the luminance information in the received optical signals in order to extract video components from the image data produced by the image capture device 42. An analog-to-digital converter (ADC) 44 converts the analog signals to digital video signals, and a digital camera processor (DCP) 45 processes the digital video signals to generate composite video, digital luminance and digital chrominance signals. A vertical driver 46 applies tri-statable signals for transferring charge stored in the image capture elements, e.g., photo diodes, of the image capture device 42 to a vertical transfer unit of the image capture device 42, responsive to gate signals produced by a timing generator 47. A microprocessor 48 controls operation of various components of the camera system 400.

This portion of Lee et al. generally discusses image capture. It does not, however, disclose or suggest "streaming at least said first image data set, said second image data set, and streaming said third image data set and said fourth image data set" as recited in appellants' claim 13.

For the reasons advanced above, appellants respectfully assert that claim 13 is not anticipated by Lee et al. The standard for lack of novelty, that is, for "anticipation," under 35 U.S.C. 102 is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986).

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Argument re Issue B

Claims 18 and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lee et al. (U.S. 6,614,477). Appellants respectfully assert, for at least the reasons advanced below, that claims 18 and 19 are not anticipated by Lee et al.

Claim 18 recites the following:

A method of operating a camera, said method comprising:

causing said camera to initiate image data acquisition by actuating a switch located on the exterior of said camera;

causing said camera to vary the frame rate at which image data is acquired by selectively operating said switch.

The Examiner states the following on page 6 of the final Office action:

[Lee et al.] fails to distinctly state that the user-controlled switch is located on the exterior of the camera. The Examiner takes **Official Notice** that it is well known in the art to place user-controlled switches on the exterior surface of a camera.

(bold type in original)

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al. Appellants assert that this position is in error and that the rejection of claim 19 should be reversed for at least the same reasons as advanced previously herein with respect to the rejection of claim 1.

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Argument re Issue C

Claims 2-5, 21 and 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lee et al. (U.S. 6,614,477) in view of Ohkawara et al. (U.S. 6,630,950).

Claims 2-5

Claims 2-5 are allowable at least as depending from allowable base claim 1. For purposes of this appeal, claims 2-5 stand or fall with claim 1.

Claims 21 and 22

Claims 21 and 22 are allowable at least as depending from allowable base claim 18. For purposes of this appeal, claims 21 and 22 stand or fall with claim 18.

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Argument re Issue D

Claims 6 and 7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lee et al. (U.S. 6,614,477) in view of Niikawa (U.S. 6,710,809).

Claims 6 and 7 are allowable at least as depending from allowable base claim 1. For purposes of this appeal, claims 6 and 7 stand or fall with claim 1.

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Argument re Issue E

Claims 14 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lee et al. (U.S. 6,614,477) in view of Matsumoto et al. (U.S. 6,795,642). Appellants respectfully assert, for at least the reasons advanced below, that claims 14 and 15 are not unpatentable over the cited references.

Claim 14

Claim 14 recites the following:

A method of capturing image data with a camera comprising:
determining a frame rate for future image capture based upon a user input provided while the camera is simultaneously capturing image data;
then capturing further image data at said determined frame rate; and
storing said captured image data.

Claim 14 recites "determining a frame rate for future image capture based upon a user input provided while the camera is simultaneously capturing image data". As discussed above, with respect to the rejection of claim 1, Lee et al. does not disclose

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(explicitly or inherently) that the frame rate can be changed during image capture. Matsumoto et al. does nothing to remedy this inadequacy. Since, even the combination of references proposed by the Examiner fails to disclose all elements of appellants' claim, a *prima facie* case of obviousness has not been established.

Claim 15

Claim 15 recites the following:

A camera user interface comprising:
means for capturing frames at a frame rate;
means for selectively varying said frame rate while
capturing said frames; and
means for storing said captured frames.

Claim 15 recites "means for selectively varying said frame rate while capturing said frames". As discussed above, with respect to the rejection of claim 1, Lee et al. does not disclose or suggest that the frame rate can be changed during image capture. Again, Matsumoto et al. does nothing to remedy this inadequacy. Accordingly, a *prima facie* case of obviousness has not been established with respect to claim 15.

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Argument re Issue F

Claim 16 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Lee et al. (U.S. 6,614,477) in view of Matsumoto et al. (U.S. 6,795,642) and further in view of Niikawa (U.S. Patent No. 6,710,809).

Claim 16 is allowable at least as depending from allowable base claim 15. For purposes of this appeal, claim 16 stands or falls with claim 15.

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Argument re Issue G

Claim 20 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Lee et al. (U.S. 6,614,477) in view of Yamamoto et al. (U.S. Patent No. 6,856,345).

Claim 20 is allowable at least as depending from allowable base claim 18. For purposes of this appeal, claim 20 stands or falls with claim 18.

For the reasons set forth above, appellants respectfully assert that all of the claims are allowable and that, accordingly, all of the rejections should be reversed.

Respectfully submitted,
KLAAS, LAW, O'MEARA & MALKIN, P.C.

By

2/7/06

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(8) CLAIMS APPENDIX

1. A camera user interface assembly comprising:
a video capture selector having at least a first operating state in which said camera captures image data at a first rate and a second user selectable operating state in which said camera captures image data at a second rate different from said first rate;
said selector being switchable between said first and second states during continuous image data capture.
2. The assembly of claim 1 wherein said selector is relatively progressively actuatable.
3. The assembly of claim 2 wherein said selector operates through variation of at least one operating parameter, said at least one operating parameter comprising at least one of:
switching time, force magnitude, displacement speed, amount of displacement, number of closed contacts, azimuth position and potentiometer resistance.
4. The assembly of claim 1 wherein said selector operates through variation of at least one operating parameter, said at least one operating parameter comprising at least one of:

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force magnitude, displacement speed and number of closed contacts.

5. The assembly of claim 1 wherein said selector operates through variation of the operating parameter comprising force magnitude.

6. (original) The assembly of claim 1 and further comprising: feedback of selection of said first rate or said second rate.

7. The assembly of claim 6 wherein said feedback comprises at least one of:
audio notification and visual notification.

Claims 8-12 (canceled)

13. A method of creating and displaying video of an object comprising:

imaging said object on a photodetector array;
in response to a first user input applied to a variable-frame-rate-trigger:
- generating a first image data set representative of said object;

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- then waiting a first period of time, then generating a second image data set representative of said object immediately after said first period of time;
 - in response to a second user input applied to said variable-frame-rate-trigger, wherein said second user input is different than said first user input:
 - generating a third image data set representative of said object;
 - then waiting a second period of time, then generating a fourth image data set representative of said object immediately after said second period of time, wherein said second period of time is different than said first period of time;
- streaming at least said first image data set, said second image data set, and streaming said third image data set and said fourth image data set.

14. A method of capturing image data with a camera comprising:
- determining a frame rate for future image capture based upon a user input provided while the camera is simultaneously capturing image data;
 - then capturing further image data at said determined frame rate; and
 - storing said captured image data.

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15. A camera user interface comprising:
means for capturing frames at a frame rate;
means for selectively varying said frame rate while capturing
said frames; and
means for storing said captured frames.

16. The camera user interface of claim 15 and further
comprising:
means for notifying of said frame rate.

17. (canceled)

18. A method of operating a camera, said method
comprising:
causing said camera to initiate image data acquisition by
actuating a switch located on the exterior of said camera;
causing said camera to vary the frame rate at which image
data is acquired by selectively operating said switch.

19. The method of claim 18 wherein said causing said
camera to vary the frame rate at which image data is acquired
occurs while said camera is acquiring image data.

20. The method of claim 18 and further comprising:

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causing said camera to stop image data acquisition by discontinuing actuation of said switch.

21. The method of claim 18 wherein said selectively operating said switch comprises applying a varying force to said switch.

22. The method of claim 21 and further wherein: increasing the level of force applied to said switch causes said frame rate to increase.

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(9) EVIDENCE APPENDIX

No evidence pursuant to §§ 1.130, 1.131 or 1.132 or entered
by or relied upon by the examiner is being submitted.

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(10) RELATED PROCEEDINGS AND INTERFERENCES
APPENDIX

No related proceedings are referenced in (2) above.

Accordingly, no copies of decisions in related proceedings are provided.

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